

EDMUND G. BROWN JR.
Attorney General of the State of California
DAVID S. CHANEY
Chief Assistant Attorney General
ROCHELLE C. EAST
Acting Senior Assistant Attorney General
MICHELLE DES JARDINS
Supervising Deputy Attorney General
PHILLIP LINDSAY, State Bar No. 204444
Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-3134
Fax: (619) 645-2581
Email: Phillip.Lindsay@doj.ca.gov

Attorneys for Defendant Rodney T. Darr

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MATTHEW L. JOHNSON,

Plaintiff,

v.

DARR,

08-CV-0080-DMS (POR)

**DECLARATION OF T. EMIGH IN
SUPPORT OF DEFENDANTS' MOTION
TO DISMISS COMPLAINT**

Hearing: August 28, 2008
Time: 2:00 p.m.
Courtroom: H
Judge: The Honorable
Louisa S. Porter

I, T. EMIGH, declare as follows:

1. I make the following declaration of facts based on my own knowledge and, if called, can testify competently thereto.

2. I have worked for the California Department of Corrections and Rehabilitation (CDCR) for approximately twenty-one (21) years. I am currently employed by the CDCR as the Assistant Chief of Inmate Appeals Branch, Sacramento, California which receives all inmate appeals submitted to the third formal level of appeal, also known as the Director's level. I have held this position for approximately four years.

1 3. There are four levels of appeal review: one (1) informal and three (3) formal levels.
2 Cal. Code Regs. tit. 15, § 3084.5. To initiate the appeal process, the inmate must submit a
3 CDCR form 602, which requires the inmate to describe the adverse action he or she seeks to
4 appeal in addition to specifying the relief he or she requests. The informal level of review
5 requires the inmate to submit the CDCR form 602 directly to prison staff who were involved in
6 the action or decision within fifteen (15) working days to attempt a resolution on an informal
7 basis. If the issue is not resolved at the informal level, the inmate may appeal to the first formal
8 level of review, which is submitted for review at the Division Head level. If the inmate is not
9 satisfied after the first formal level of review, the inmate may submit the CDCR form 602 for a
10 second formal level review, which is conducted by the Institution Head or his or her designee. If
11 the inmate is not satisfied after the second level review is completed, the inmate may appeal to
12 the Secretary of CDCR (formerly the Director) by submitting the appeal to the Inmate Appeals
13 Branch.

14 3. A decision by the Inmate Appeals Branch, which is supervised by the Chief of Inmate
15 Appeals, constitutes the Secretary's decision and completes the administrative appeal process.
16 All inmate appeals submitted to the Inmate Appeals Branch for third level review are processed
17 through my office.

18 4. Upon receipt, all appeals are logged into a computer database. The computer database
19 tracks all properly filed inmate appeals received since 1993, which have been accepted for
20 review by the Inmate Appeals Branch.

21 5. I am personally familiar with the record keeping system at the Inmate Appeals Branch
22 (IAB), and I am able to verify the status of a California inmate's third-level administrative
23 appeal(s).

24 6. This Office received two requests from the Office of the Attorney General to research
25 our system files to locate any and all Third Level Inmate Appeals filed after July 2005 by
26 Plaintiff Matthew Johnson, CDCR #D-33369, against Correctional Lieutenant Darr, alleging
27 staff misconduct pertaining to conspiracy and an inmate assault in July 2005.

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1 7. The first request was made in relation to Plaintiff's complaint under case number 06-
2 CV-1257-JAH (POR). Based on that first request, this Office provided the Office of the
3 Attorney General with a declaration signed by N. Grannis, Chief of the Inmate Appeals Office,
4 dated December 1, 2006, which stated that a thorough search of records kept in the ordinary
5 course of business in the Office of the Inmate Appeals Branch in Sacramento, California,
6 revealed that no appeals by Plaintiff were accepted for review after July 2005.


7 8. This Office received a second request from the Office of the Attorney General in June
8 2008, to research our system files to locate any and all Third Level Inmate Appeals filed by
9 Plaintiff Matthew Johnson, CDCR #D-33369.

10 9. Since December 1, 2006 (the date N. Grannis signed the previous declaration) through
11 June 4, 2008, this Office has accepted one appeal for review from Plaintiff Matthew Johnson. It
12 was accepted on October 19, 2007, and it concerned a staff complaint against an employee at the
13 Correctional Training Facility (CTF) in Soledad, California.

14 10. No third-level appeal has been accepted for review by the Inmate Appeals Branch in
15 Sacramento, California, from Plaintiff Matthew Johnson, CDCR #D-33369, against Correctional
16 Officer Darr, pertaining to an assault that took place in July 2005. Therefore, Plaintiff Matthew
17 Johnson did not exhaust all administrative remedies with respect to any alleged incidents during
18 July 2005, involving Defendant Darr prior to filing this lawsuit against him.

19 I declare under penalty of perjury under the laws of the United States of America that the
20 foregoing is true and correct.

21 Executed on July 17, 2008, at Sacramento, California.

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23 
24 T. EMIGH
25 Assistant Chief, Inmate Appeals Branch
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SD2008700481

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Johnson, Matthew L. v. Darr**

No.: **08CV0080 DMS POR**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266.

On July 18, 2008, I served the attached **DECLARATION OF T. EMIGH IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS COMPLAINT** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Diego, California, addressed as follows:

Matthew L. Johnson
D-33369
California Training Facility
DW-315 UP
CTF Central
P.O. Box 689
Soledad, CA 93960

In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 18, 2008, at San Diego, California.

K. Alvarez

Declarant


Signature

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